



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

HAROLD SMITH, §
Petitioner, §
§
vs. § CIVIL ACTION NO. 6:06-3612-HFF-WMC
§
FREDERICK A. ABRAHAMIAN, §
Director of Federal Records Center, §
Respondent. §

ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE

This case was filed as a mandamus action. Petitioner is a federal prisoner proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the action be dismissed *without prejudice* and without issuance and service of process. The Report is made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on January 19, 2007. The Clerk entered Petitioner's objections to the Report on January 31, 2007. The Court has made a de novo review of those portions of the Report to which Plaintiff objects but finds those objections to be without merit.

Therefore, after a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Petitioner's objections, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that the action be **DISMISSED** *without prejudice* and without issuance and service of process. Petitioner's Motion to Amend and Motion to Change Venue, thus, are rendered **MOOT**.*

IT IS SO ORDERED.

Signed this 1st day of March, 2007, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

*Even if these motions were not rendered moot, the Court would deny them as Petitioner has failed to set forth any factual or legal basis on which the Court could properly grant the motions.